

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

## DALLY PROPERTIES, LLC,

Plaintiff,

V.

TRUCK INSURANCE EXCHANGE, a foreign corporation; TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, a foreign corporation; and LEXINGTON INSURANCE COMPANY, a foreign corporation,

## Defendants.

Case No. C05-0254L

ORDER ON DALLY PROPERTIES' MOTION FOR PARTIAL SUMMARY JUDGMENT RE: JOINT AND SEVERAL LIABILITY

This matter comes before the Court on “Dally Properties Motion for Partial Summary Judgment Re: Wind-driven Rain” (Dkt. # 41). Travelers Property Casualty Company of America (“Travelers”), Lexington Insurance Company (“Lexington”) and Truck Insurance Exchange (“Truck”) are being sued by Dally Properties, LLC (“Dally”) for breach of insurance contract, bad faith claims handling, Consumer Protection Act Violations and attorney’s fees. Dally now moves for summary judgment on the issue of the insurers’ joint and several liability.

ORDER ON DALLY PROPERTIES'  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT RE: JOINT AND SEVERAL  
LIABILITY- 1

1 The facts relevant to this claim have been recited in other orders and will not be repeated here.

2 In this motion, Dally asks the Court to issue "an order establishing that any insurance  
3 company whose policy was triggered due to covered water intrusion damage is jointly and  
4 severally liable for the entire loss." Motion at 3. Because Dally has not yet shown any of the  
5 insurers are liable, much less multiple insurers, this issue is not yet ripe for decision. The  
6 possible joint and several liability of an individual insurer that is found liable will depend on the  
7 terms of its policy that triggered its liability. This policy language will describe whether the  
8 insurer's coverage is intended to be for the commencement and/or occurrence of a loss, or for an  
9 ongoing and/or progressive loss. For the Court to render a decision on a given insurer's  
10 potential joint and several liability prior to determining its liability would risk "entangling  
11 [itself] in abstract disagreements." Abbott Labs. v. Gardner, 387 U.S. 136, 148 (1967).

12 For the foregoing reasons, IT IS HEREBY ORDERED that Dally's motion for summary  
13 judgment on the question of joint and several liability is DENIED at this time.

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15 DATED this 5th day of April, 2006.

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19 Robert S. Lasnik  
United States District Judge

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ORDER ON DALLY PROPERTIES'  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT RE: JOINT AND SEVERAL  
LIABILITY- 2